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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

March 14, 2011

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 7418

Todd Wilhite
Wilhite & Associates, Inc.
PO Box 826
Pleasant Grove, Utah 84052-0826

Subject: Proposed Assessment for State Cessation Order No. MC-2010-42-10, Wilhite and Associates, Inc., Gulch Mine, S/023/0087, Juab County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Wilhite:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division inspector, Wayne Western, on October 7, 2010. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$2,530.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of the cessation order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.

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S/023/0087
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The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by April 13, 2011). Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,



Lynn Kunzler
Assessment Officer

LK:eb
Enclosure: Proposed assessment worksheet
cc: Vicki Bailey, Accounting
P:\GROUPS\MINERALS\WP\M023-Juab\S0230087-Gulch\final\proAssess-3781-03092011.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Wilhite & Associates, / Gutch Mine PERMIT S/023/0087

CO # MC-2010-42-10

ASSESSMENT DATE March 10, 2011

ASSESSMENT OFFICER Lynn Kunzler

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today=s date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>None</u>	<u></u>	<u>0</u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector=s and operator=s statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(Assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

******* *Having an adequate bond assures that the site is properly reclaimed, but not having this financial assurance, it becomes likely the site will not be properly reclaimed. Therefore points were assigned at the mid-point of the 'likely' range.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

******* *It is unlikely that there are sufficient funds to reclaim the entire site. Given the scope of work needed, a significant portion of the reclamation work would be under funded. Points are assigned at mid point in range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 28

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligent

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

*** *The operator was aware of the need for adequate surety, and apparently ignored requests to provide the surety. There was an economic gain for the operator in that he did not provide the surety. While not considered in assessing history points for this violation, the operator has failed to bond or provide adequate bond for three other sites. Points were assessed at the maximum for Negligence.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

Good faith points are not awarded. The cessation order has yet to be abated and the abatement period was extended. Both of these circumstances prohibit the awarding of good faith.

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-2010-42-10</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>15</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>43</u>
 TOTAL ASSESSED FINE	 <u>\$2,530</u>